

DUNCAN MILLER

IBLA 77-289

Decided August 4, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 16723 for failure to tender sufficient rental payment.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper showing that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

2. Oil and Gas Leases: Applications: Generally-Oil and Gas Leases: Rentals

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Duncan Miller appeals from a March 14, 1977, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offer NM 16723 for failure to tender sufficient rental for the lands described in the offer. Miller's offer was also found to be unacceptable, in part, in that portions of the lands described in the lease offer had been set aside as "Special Use Areas" within the Cabezón 1-04 Management Framework Plan, a designation which precludes the leasing of the lands for oil and gas exploration. On appeal Miller argues that the decision below is arbitrary and capricious, "because it gives no breakdown on the rental deficiency," and

because the lands at issue constitute, "[a] very isolated area, something like 20 to 25 miles from a secondary highway." Both contentions are wholly without merit.

[1] This Board, in deciding other recent appeals by Miller, Duncan Miller, 31 IBLA 311 (1977); Duncan Miller, 30 IBLA 350 (1977); has sustained decisions of the New Mexico State Office refusing to lease "Special Use Areas" in the Cabezon planning unit for oil and gas exploration. Miller's arguments on appeal in both of these instances did not differ in substance from those before us now and those decisions are dispositive of the case at bar, insofar as it involves these "Special Use Areas." As we held in Duncan Miller, 31 IBLA 311 (1977):

It is a well-settled matter that the Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper showing that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. E.g., Cartridge Syndicate, 25 IBLA 57 (1976); T. R. Young, Jr., 20 IBLA 333 (1975).

[2] Miller's lease offer NM 16723 requests issuance of an oil and gas lease for parcels which total 2,653.6 acres. Rental on this acreage, calculated at the 50 cents per acre rate that was in force at the time the application was made, would total \$1,327; but Miller's application was accompanied by a check for only \$1,110, a figure which does not fall within the 10 percent margin of error allowed by 43 CFR 3103.3-1. An offer for a noncompetitive oil and gas lease is properly rejected where the offeror fails to tender the full first year's rental with his offer, and the amount of rental tendered is deficient by more than 10 percent of the proper amount due. Chester Carthel, A-30496 (March 10, 1966). Miller's offer was, therefore, properly rejected under 43 CFR 3111.1(d). 1/

1/ As stated above, Miller's offer to lease, NM 16723, sought lands totalling 2,653.6 acres. Although the decision below makes no mention of the problem, we note that the applicable Department regulation, 43 CFR 3110.1-3, provides that a noncompetitive offer to lease for oil and gas, "may not include more than 2,560 acres except where the rule of approximation applies." The rule of approximation, 43 CFR 3100.0-5(d), cannot be applied to the facts of Miller's application so as to save it from the prohibition of 43 CFR 3110.1-3, and thus the offer could have been rejected for this reason as well as for the grounds enumerated in the decision below.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge

